

Message Text

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INFO OCT-01 ISO-00 SP-02 AID-05 EB-07 NSC-05 CIEP-01

TRSE-00 SS-15 STR-04 OMB-01 CEA-01 CIAE-00 COME-00

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FM AMEMBASSY LISBON

TO SECSTATE WASHDC 5621

INFO AMEMBASSY BONN

USMISSION EC BRUSSELS

AMEMBASSY LONDON

RUE CR/AMCONSUL OPORTO 0457

AMEMBASSY PARIS

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AMCONSUL PONTA DELGADA

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E.O. 11652: N/A

TAGS: EINV, PO

SUBJECT: SUMMARY OF DRAFT FOREIGN INVESTMENT CODE

REF: 75 LISBON 7573

SUMMARY: EMBASSY HAS OBTAINED COPIES OF TWO DRAFTS OF FOREIGN INVESTMENT CODE. THE OBVIOUSLY LATER, AND MORE DEFINITIVE, VERSION IS SUMMARIZED HEREIN. WHEN FINALLY PROMULGATED, CODE WILL LIKELY NOT DIFFER SUBSTANTIALLY FROM THIS VERSION. CURRENT DRAFT CODE ESTABLISHES CRITERIAL FOR AUTHORIZATIONS OF FOREIGN IVESTMENT AND, EXCEPT UNDER SPECIAL CIRCUMSTANCES, BANS ACQUISITION OF EXISTING DOMESTIC FIRMS. IT SETS UP SPECIAL CATEGORY OF CONTRACUTUAL INVESTMENTS, SETS TIME LIMITS FOR GOVERNMENT TO RESPOND

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TO INVESTMENT APPLICATIONS, AND LISTS SECTORS BARRED TO

NEW FOREIGN INVESTMENT. CODE PROVIDES FOR RESTRICTED REINVESTMENT. AND SALE OR LIQUIDATION OF INVESTMENT. IT GUARANTEES EQUAL TREATMENT; JUST INDEMNIZATION IN CASE OF EXPROPRIATION OR NATIONALIZATION; AND CONTROLLED TRANSFER OF PROFITS, DIVIDENDS, PAYMENTS FOR AUTHORIZED EXTERNAL LOANS, AND REEXPORTED INVESTMENTS. ACCESS TO INTERNAL CREDIT ALSO PERMITTED, BUT MADE DEPENDENT ON CREDIT TERM AND ON DEGREE OF FOREIGN OWNERSHIP. CODE ALLOWS GOP TO POSTPONE TRANSFERS IF THEY WOULD CREATE SERIOUS FINANCIAL PROBLEMS. FOREIGN PERSONNEL PERMITTED WITHIN LIMITS, PROVIDED PORTUGUESE WILL BE TRAINED TO REPLACE THEM WITHIN DEFINED PERIODS. FOREIGN PERSONNEL CONDITIONALLY EXEMPTED FROM MAXIMUM NATIONAL SALARY. CODE ESTABLISHES GOVERNMENT CONTROL AND LIMITATIONS ON TRANSFERS OF TECHNOLOGY, AND BANS TRANSFER PRICING.

FOREIGN INVESTMENT INSTITUTE TO BE SET UP AS SOLE GOVERNMENT AGENT FOR FOREIGN INVESTMENT. END SUMMARY.

1. PREAMBLE: SEVERAL BASIC ASSUMPTIONS, WHICH MUST STILL BE APPROVED BY CONSTITUENT ASSEMBLY, UNDERLIE CODE.

A. CODE IS BEING PUBLISHED BEFORE COMPLETION OF CONSTITUTION AND ECONOMIC PLAN BECAUSE ABSENCE OF CODE HAS HAMPERED MANAGEMENT OF EXISTING FOREIGN INVESTMENT, MADE NEW INVESTMENT "PROBLEMATIC", AND LIMITED ABILITY TO NEGOTIATE BILATERAL INVESTMENT ACCORDS.

B. CODE IS ATTEMPT TO CLARIFY CONDITIONS AND RESTRICTIONS, AND THUS AVOID AD HOC DECISIONS. HOWEVER, UNTIL PRIORITY SECTORS FOR FOREIGN INVESTMENT ARE ESTABLISHED, DECISIONS WILL CONTINUE TO BE MADE CASE-BY-CASE.

C. NEW FOREIGN INVESTMENT INSTITUTE (INSTITUTE DO INVESTIMENTO ESTRANGEIRO--IIE) WILL ACT AS SOLE GOVERNMENT AGENT IN NEGOTIATIONS WITH FOREIGN INVESTORS.

D. FOREIGN INVESTMENT IS TO BE SUBORDINATED TO GOVERNMENT ECONOMIC POLICY, ECONOMIC PLAN, IMPLEMENTING LEGISLATION, LIMITED OFFICIAL USE

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AND CODE ITSELF.

2. AUTHORIZATIONS:

A. VIABLE PROJECTS WILL BE EVALUATED ACCORDING TO DEGREE THAT THEY CREATE JOBS, CONTRIBUTE TO BALANCE OF PAYMENTS, INCREASE VALUE OF DOMESTIC RESOURCES, UTILIZE DOMESTIC GOODS AND SERVICES, AID INDUSTRIAL REDONVERSION AND REGIONAL

DEVELOPMENT, PRODUCE GOODS NOT CURRENTLY MADE IN COUNTRY,
INTRODUCE ADVANCED TECHNOLOGY, TRAIN WORKERS, REQUIRE
LITTLE INTERNAL CREDIT, AND REDUCE INDUSTRIAL POLLUTION.

B. NO AUTHORIZATION WILL BE GRANTED FOR A MERE
ACQUISITION OR ABSORPTION OF EXISTING DOMESTIC FIRM
UNLESS IT INVOLVES IMPROVED TECHNOLOGY OR PRODUCTIVITY,
INCREASED PRODUCTION, OR FINANCIAL REORGANIZATION
CONSIDERED IN NATIONAL INTEREST.

C. AUTHORIZATION SCHEMES:

(1) GENERAL-INVESTMENTS WHICH ENJOY SAME INCENTIVES,
AND ARE SUBJECT TO SAME RULES, AS DOMESTIC FIRMS.

(2) CONTRACTUAL-INVESTMENTS OF SPECIAL INTEREST
FOR ECONOMY BECAUSE OF THEIR SIZE OR LONG-TERM PROSPECTS,
ELIGIBLE FOR ADDITIONAL INCENTIVES AND SPECIAL CONDITIONS.
REQUIRE COUNCIL OF MINISTERS APPROVAL.

D. RESPONSES TO APPLICATIONS MADE UNDER GENERAL SCHEME
MUST BE GIVEN WITHIN 180 DAYS. IF NO RESPONSE GIVEN,
AUTHORIZATION CONSIDERED GRANTED. ANSWERS TO APPLICATIONS
UNDER CONTRACTUAL SCHEME MUST BE MADE WITHIN 270 DAYS.

E. SECTORS BARRED TO NEW FOREIGN INVESTMENT: PUBLIC
SERVICES (UTILITIES AND INTERNAL TRANSPORT), MONETARY AND
FINANCIAL INSTITUTIONS, INSURANCE, ADVERTISING AND MEDIA,
SECTORS NATIONALIZED TO DATE, AND OTHER SECTORS OF NATIONAL
INTEREST EXPRESSLY DEFINED BY LAW. BAN ON FOREIGN IN-
VESTMENT IN THESE SECTORS DOES NOT "IN ITSELF" AFFECT
EXISTING INVESTMENTS. COUNCIL OF MINISTERS CAN ALSO
AUTHORIZE MINORITY FOREIGN INVESTMENT IN NATIONALIZED
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SECTORS. (NOTE: LAST PROVISION IS ADDITION TO EARLIER
DRAFTS. IT IS NOT CLEAR WHETHER MINORITY FOREIGN INVEST-
MENT WILL BE PERMITTED IN ALL NATIONALIZED SECTORS).

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F. REINVESTMENT EQUAL TO 50 PERCENT OF INITIAL CAPITAL
ALLOWED WITHOUT SPECIAL AUTHORIZATION.

G. SALE OF INVESTMENT TO OTHER FOREIGNERS REQUIRES
AUTHORIZATION. IN FIRMS WITH PORTUGUESE (PUBLIC OR
PRIVATE) PARTICIPATION, IF FOREIGN INVESTMENT TRANSFERRED
OR LIQUIDATED, PORTUGUESE PARTNERS HAVE OPTION TO ACQUIRE
OTHER PART.

3. GUARANTEES:

A. TREATMENT WILL BE EQUAL TO THAT GIVEN DOMESTIC FIRMS.

B. EXPROPRIATION WILL BE MADE ONLY FOR REASONS OF "PUBLIC
CONVENIENCE".

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(1) EXPROPRIATED OR NATIONALIZED INVESTMENTS WILL
RECEIVE JUST INDEMNIZATION.

(2) INDEMNIZATIONS WILL BE FIXED BY 3-MAN ARBITRATION
BOARD (ONE REPRESENTATIVE OF GOVERNMENT, ONE OF INVESTOR, AND ONE
DESIGNATED BY MUTUAL CONSENT OR BY COURT).

(3) INVESTOR CAN APPEAL INDEMNIZATION DECISION TO SUPREME COURT.

(4) PROCEEDS OF INDEMNIZATIONS WILL BE TRANSFERABLE WITHIN ONE YEAR.

C. PROFITS AND DIVIDENDS CAN BE TRANSFERRED AFTER DEDUCTION OF LEGAL AMORTIZATIONS. ANNUAL LIMIT IS 12 PERCENT OF CAPITAL INVESTMENT (INCLUDING REINVESTED PROFITS); 20 PERCENT FOR FIRMS WHICH EXPORT MORE THAN 50 PERCENT OF THEIR PRODUCTION.

D. PAYMENTS FOR EXTERNAL LOANS CAN BE TRANSFERRED IF:

(1) LOAN PREVIOUSLY AUTHORIZED.

(2) DEBT VERIFIED.

E. PROCEEDS OF SALE OR LIQUIDATION OF INVESTMENTS CAN BE REEXPORTED AFTER PAYMENT OF TAXES. CONDITIONS:

(1) MINIMUM OF FIVE YEARS SINCE CAPITAL IMPORT.

(2) THREE MONTHS' ADVANCE NOTICE.

(3) ONLY 20 PERCENT OF TOTAL PROCEEDS CAN BE REEXPORTED ANNUALLY, UNLESS INVESTMENTS SOLD TO OTHER FOREIGN INVESTOR IN FOREIGN CURRENCY.

F. TRANSFERS WILL BE MADE AT PREVAILING EXCHANGE RATE. INVESTOR THUS WILL HAVE FULL ACCESS TO FOREIGN EXCHANGE MARKET.

G. DIRECT FOREIGN INVESTMENTS BENEFIT FROM ALL INCENTIVES GIVEN DOMESTIC FIRMS (WITH CONTRACTUAL INVESTMENTS RECEIVING ADDITIONAL ONES). THEY HAVE EQUAL ACCESS TO SHORT-TERM (UP TO 1 YEAR) CREDIT. CRITERIAL FOR RECEIVING MEDIUM-LIMITED OFFICIAL USE

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TERM CREDIT:

(1) FIRMS WITH LESS THAN 25 PERCENT FOREIGN PARTICIPATION --ACCESS EQUAL TO DOMESTIC FIRMS.

(2) THOSE WITH 25-50 PERCENT FOREIGN HOLDINGS--UP TO 50 PERCENT OF CAPITAL AND RESERVES.

(3) THOSE WITH MORE THAN 50 PERCENT FOREIGN OWNERSHIP --UP TO 25 PERCENT OF CAPITAL AND RESERVES.

NOTE: THE LATTER TWO CREDIT LIMITS HAVE BEEN DECREASED FROM 60 AND 40 PERCENT, RESPECTIVELY, PROVIDED IN EARLIER

DRAFT).

LARGER AMOUNTS AND LONG-TERM CREDIT REQUIRE SPECIAL APPROVAL.

4. EXCEPTIONS TO GUARANTEES: TRANSFERS CAN BE SUSPENDED BY COUNCIL OF MINISTERS IN CASE OF "PERILOUS" BALANCE OF PAYMENTS SITUATION OR IF TRANSFERS WOULD PROVOKE "GRAVE ECONOMIC AND FINANCIAL" PERTURBATIONS. IN THIS CASE, ECONOMIC COUNCIL OF MINISTERS DETERMINES AMOUNT WHICH CAN BE TRANSFERRED--BUT NEVER LESS THAN 20 PERCENT OF TOTAL. (COMMENT: THIS CLAUSE IS RATHER CONFUSING. REEXPORT OF PROCEEDS FROM SALE OR LIQUIDATION OF INVESTMENT ALREADY LIMITED TO 20 PERCENT ANNUALLY (3.C. ABOVE).

5. FOREIGN PERSONNEL: FIRMS WITH AT LEAST MAJORITY FOREIGN OWNERSHIP CAN HAVE FOREIGN PERSONNE. CONDITIONS:

A. REQUEST FOR AUTHORIZATION FOR FOREIGN PERSONNL MUST INCLUDE PLAN FOR TRAINING PORTUGUESE TO REPLACE THEN. (NOTE: EARLIER DRAFT STIPULATION THAT PLAN MUST PROVIDE FOR PORTUGUESE TO FILL MAJORITY OF TECHNICAL AND ADMINISTRATIVE POSTS HAS BEEN DROPPED).

B. GOVERNMENT WILL ESTABLISH FOR EACH COMPANY LIMIT ON FOREIGN PERSONNEL AND SET PERIODS FOR THEIR REPLACEMENT BY PORTUGUESE.

C. SALARIES OF FOREIGN PERSONNEL RESIDENT FOR LESS THAN LIMITED OFFICIAL USE

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FIVE YEARS ARE NOT SUBJECT TO MAXIMUM NATIONAL SALARY. UP TO 70 PERCENT OF SALARY IS FREELY TRANSFERABLE UPON NOTIFICATION.

D. DUCH FOREIGN PERSONNEL AS IN 6.C. ABOVE ALSO CAN:

(1) AFTER THREE YEARS RESIDENCE FREELY TRANSFER FUNDS EARNED FROM THEIR WORK.

(2) FREELY TRANSFER THEIR PERSONAL OR FAMILY GOODS, EVEN IF ACQUIRED IN PORTUGAL, IN ACCORDANCE WITH EXISTING LAW. (COMMENT: NOT CLEAR WHETHER THREE YEARS RESIDENCE ALSO REQUIRED).

6. TRANSFERS OF TECHNOLOGY:

A. TRANSFERS OF TECHNOLOGY DEFINED AS:

(1) RIGHTS TO USE OF PATENTS, ETC.

(2) TRANSFER OF NON-PATENTED KNOWLEDGE SUCH AS PLANS,
PROJECTS, DATA, SPECIFICATIONS, INSTRUCTIONS, ETC.

(3) SERVICES OF ENGINEERING, CONSTRUCTION, INSTALLATION,
OPERATION, REPAIR OR MAINTENANCE.

(4) ANY CONSULTING SERVICES.

(5) TRAINING.

(6) ANY OTHER TYPES OF TECHNICAL ASSISTANCE.

B. AGREEMENTS LINKING DOMESTIC AND FOREIGN FIRMS OR
CONTRACTS FOR TRANSFERS OF TECHNOLOGY REQUIRE PRIOR
AUTHORIZATION. ANY TECHNICAL ASSISTANCE AGREEMENTS OR
CONTRACTS MUST BE REGISTERED.

C. CONDITIONS NOT, AS A RULE, PERMITTED IN CONTRACTS FOR
TRANSFER OF TECHNOLOGY:

(1) REQUIREMENT FOR ACQUISITION OF SPECIFIED CAPITAL,
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GOODS, INTERMEDIATE PRODUCTS AND OTHER TECHNOLOGIES.

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(2) PRICE FIXING.

(3) LIMITS ON PRODUCTION.

(4) BUYER OF TECHNOLOGY OBLIGED TO TRANSFER ANY
LINKED INVENTIONS OR IMPROVEMENTS.

7. MISCELLANEOUS PROVISIONS:

A. INDIVIDUALS AND FIRMS WITH EXISTING FOREIGN INVESTMENT
IN PORTUGAL MUST REGISTER THOSE INVESTMENTS WITH THE BANK OF
PORTUGAL WITHIN THREE MONTHS AFTER PUBLICATION OF CODE.

B. VIOLATIONS OF CODE OR OF CONTRACTS WITH GOVERNMENT
PUNISHABLE BY PARTIAL OR TOTAL LOSS OF RIGHTS AND INCENTIVES.

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C. TRANSFER PRICING IS FORBIDDEN.

D. DISPUTES ARE SUBJECT TO PORTUGUESE LAW AND COURTS.

E. BANK OF PORTUGAL RESPONSIBLE FOR IMPLEMENTATION OF
CODE UNTIL, WITHIN THREE MONTHS, IIE IS ESTABLISHED.

9. COMMENTS AND TEXT WILL BE FORWARDED AS SOON AS FINAL
VERSION OF CODE IS PUBLISHED.

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Message Attributes

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Draft Date: 13 JAN 1976
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